

## **REMARKS**

### Claims

Claims 1-30 are pending and are subject to restriction requirement.

In the present reply, claims 1-19 and 22-28 are canceled without prejudice, claims 20 and 29 are amended, and claims 32-71 are newly added. Support for the new claims can be found throughout the specification, for example Examples 2 and 5 and FIGS. 9, 10, 14 and 15.

Upon entry of the present reply, claims 20, 21, and 29-71 will be pending in this application.

No new matter has been added by way of these amendments.

### Election/Restriction:

Restriction has been required under 35 U.S.C. § 121 to one of seven groups of inventions, characterized herein as Groups I to VII. The claims and associated subject matter of each Group are set forth below.

- I. Claims 1-3, 13(part), 14, 20(part)-21(part), drawn to compositions comprising 2:1 R:S modafinil, synthesis and method of use.
- II. Claims 4-6, 13(part), 15, 20(part)-21(part), 22, drawn to R-(-)-modafinil Form III.
- III. Claims 7-9, 13(part), 17, 20(part)-21(part), 28-30, drawn to R-(-)-modafinil Form V, preparation and method of use.
- IV. Claims 10-12, 13(part), 16, 20(part)-21(part), 27, drawn to R-(-)-modafinil Form IV, preparation and use.
- V. Claims 23(part)-26(part), drawn to chloroform solvate.
- VI. Claims 23(part)-26(part), drawn to chlorobenzene solvate.
- VII. Claims 23(part)-26(part), drawn to acetic acid solvate.

Applicants respectfully submit that a search for a polymorphic form of R-(-)-modafinil would necessarily uncover references directed to any polymorphic form of R-(-)-modafinil. This is true because what Applicants call "Form V" could be called something else in another reference, and the Examiner's search could not be limited to "Form V." Therefore, the Examiner's search would necessarily uncover all of the polymorphic forms of R-(-)-modafinil. Because Groups II-VII are all drawn to polymorphic forms of R-(-)-modafinil, Applicants respectfully submit that these Groups could be searched without undue burden, and restriction between these Groups is improper. MPEP 803.

Nevertheless, in accordance with 37 CFR § 1.143, Applicants hereby elect, with traverse, the subject matter and claims of Group III for prosecution on the merits. Claims 20, 21, and 29-71 encompass the elected invention. Applicants hereby expressly reserve the right to file one or more divisional applications with respect to any of the non-elected subject matter.

### **CONCLUSION**

Applicants believe that the foregoing constitutes a complete and full response to the Office Action of record. Accordingly, an early and favorable action is respectfully requested. The Examiner is invited to telephone the undersigned attorney if such would expedite prosecution.

Respectfully submitted,

/Todd Spradau/

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